

Remarks

The non-final Office Action dated March 19, 2008 listed the following rejection: claims 1-10 stand rejected under U.S.C. § 103(a) over Kilkki (U.S. Patent No. 6,411,617) in view of Chao (U.S. Patent No. 6,667,984).

Applicant respectfully traverses the § 103(a) rejection of claims 1-10 because the cited combination does not correspond to the claimed invention which includes, for example, aspects directed to subjecting I/O ports and a virtual port of a switch to a single contention resolution process. The Office Action acknowledges that the cited portions of the Kilkki reference do not disclose subjecting the I/O ports (116, 117, 122 and 123) and the dedicated I/O ports 118 and 120 (*i.e.*, virtual ports) of switch 112 to a single contention resolution process. *See, e.g.*, Figure 8 and Col. 13:23-41. In an attempt to address this deficiency, the Office Action erroneously asserts that the cited portions of the Chao reference (*i.e.*, Col. 12:48-64) teach subjecting the I/O ports and the dedicated I/O ports of a switch to a single contention resolution process. In actuality, the cited portions of Chao teach input selection and output contention resolution for input ports 910 and output ports 930 of switch 900; however, Chao does not teach that switch 900 has any dedicated I/O ports (*e.g.*, ports 118 and 120 of Kilkki). *See, e.g.*, Figure 9 and Col. 15:7-61. As such, Chao does not teach subjecting dedicated I/O ports to the same contention resolution process as I/O ports 910 and 930 because Chao's switch 900 does not have dedicated I/O ports. Therefore, the cited combination of the Kilkki and Chao references does not correspond to the claimed invention. Moreover, as Applicant's disclosure is the only reference present that teaches subjecting the I/O ports and the virtual ports of a switch to a single contention resolution process, Applicant submits that any combination of the Kilkki and Chao references that includes such aspects would appear to be improperly based upon hindsight reconstruction using Applicant's disclosure as a template. *See, e.g.*, M.P.E.P. § 2145. Accordingly, the § 103(a) rejection of claims 1-10 is improper and Applicant requests that it be withdrawn.

Applicant further traverses the § 103(a) rejection of claims 1-10 because the Office Action improperly bases the rejection on Kilkki's lack of disclosing the way in which the dedicated I/O ports 118 and 120 of switch 112 are managed. Specifically, the Office Action states that "*Kilkki* does not make any provisioning for the way virtual ports are managed

with an ATM switch. Therefore it is interpreted that contention resolution for virtual and physical ports will be handled by the same process.” *See* page 2. It appears that the Office Action is asserting that Kilkki teaches contention resolution for the I/O ports (116, 117, 122 and 123) and the dedicated I/O ports (118 and 120) can be handled by the same process based upon Kilkki’s lack of teaching that contention resolution for these ports is not handled by the same process. Applicant submits that the Office Action’s assertion regarding the teaching of the Kilkki reference is contrary to the M.P.E.P. and relevant law. *See, e.g.,* M.P.E.P. §§ 2141 and 2142. Applicant submits that correspondence cannot be established based on nonexistent teachings of the Kilkki reference. Moreover, Applicant’s disclosure specifically identifies the Kilkki reference as an example of prior art in which the network node congestion control is selectively applied at the output port of the network switch (*i.e.,* Kilkki’s I/O ports (116, 117, 122 and 123) and dedicated I/O ports (118 and 120) (*i.e.,* the virtual ports not the I/O ports are not subject to the same contention resolution process). *See, e.g.,* Paragraph 0003. Accordingly, the § 103(a) rejection of claims 1-10 is improper and Applicant requests that it be withdrawn.

Applicant further traverses the § 103(a) rejection of claims 1-10 because the Office Action fails to provide motivation for the proposed combination of the Kilkki and Chao references. In this instance the Office Action alleges that the skilled artisan would have modified Kilkki to include the contention resolution taught by Chao “to perform the basic functions of an ATM switch”. It appears that the Office Action is asserting that Kilkki’s ATM switches (*e.g.,* ATM switch 112) do not function. However, the Office Action has not presented any evidence to support the assertion that Kilkki’s ATM switches do not function and such an assertion is directly contradicted by the Kilkki reference which indicates that its ATM switches do function. Applicant submits that the Office Action has simply identified elements without providing adequate motivation for why the skilled artisan would combine these elements. *See, e.g., KSR Int’l Co. v. Teleflex Inc.,* 127 S. Ct. 1727, 1741 (U.S. 2007) (“A patent composed of several elements is not proved obvious merely by demonstrating that each element was, independently, known in the prior art.”). Accordingly, the § 103(a) rejection of claims 1-10 is improper and Applicant requests that it be withdrawn.

Applicant further traverses the § 103(a) rejection of claims 1-10 because the skilled artisan would not have reasonably looked to Chao to solve a problem already solved by

Kilkki. As has been held by several recent Board decisions citing the U.S. Supreme Court decision in *KSR Int'l v. Teleflex Inc.*, a skilled artisan having common sense at the time of the invention would not have reasonably look to another reference to solve a problem already addressed by the primary reference. In this instance, as discussed above and in Paragraph 0003 of Applicant's disclosure, the Kilkki reference resolves contention relative to its ports by selectively applying congestion control at the output port of the network switch (*i.e.*, Kilkki's I/O ports (116, 117, 122 and 123) and dedicated I/O ports (118 and 120). As Kilkki already addresses the problem of contention resolution, the skilled artisan would not have reasonably looked to Chao to resolve a problem already solved by Kilkki. Moreover, Applicant submits that the record, including the Kilkki reference and Applicant discussion of Kilkki, teaches away from modifying the manner in which Kilkki performs contention resolution. *See also* M.P.E.P. § 2143.01 and *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984) ("If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification."). In view of the above, there is no motivation for the skilled artisan to modify the Kilkki reference in the manner proposed by the Office Action. Accordingly, the § 103(a) rejection of claims 1-10 is improper and Applicant requests that it be withdrawn.

Applicant notes that claims 1 and 9-10 have been amended to improve readability. These amendments are not being made to overcome any rejection raised by the Office Action, which fail for at least the reasons discussed above. Applicant has also added new claims 11-19 which depend from one of claims 1 and 9-10. Applicant submits that claims 11-13 are allowable over the cited references for at least the reasons discussed above.

In view of the remarks above, Applicant believes that each of the rejections/objections has been overcome and the application is in condition for allowance. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is asked to contact the agent overseeing the application file, Peter Zawilski, of NXP Corporation at (408) 474-9063.

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